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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

JORGE ENRIQUE RODRIGUEZ-
LOMELI,

Defendant and Appellant.

A157391

(Lake County Super. Ct. Nos.
CR950304 and CR950868)

Defendant Jorge Enrique Rodriguez-Lomeli appeals from judgment, after the trial court revoked his probation and sentenced him to prison. He contends that the court erred by failing to consider certain mitigating circumstances when imposing his sentence and by failing to provide a statement of reasons for imposing a consecutive sentence, and that the court abused its discretion in sentencing him to six years and eight months in prison. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In April 2018, in case number CR950304, the People charged defendant with willfully inflicting corporal injury on victim G.C.,¹ a former cohabitant,

¹ Pursuant to the California Rules of Court, rule 8.90, governing “Privacy in Opinions,” we refer to the victim by her initials only.

within seven years of a prior Penal Code, section 243, subdivision (e) conviction (Pen. Code, § 273.5, subd. (f)(2)).² The People also charged defendant with aggravated assault against G.C. (§ 245, subds. (a)(1) & (4)), and misdemeanor counts for aggravated trespass (§ 602.5, subd. (b)) and violating domestic violence protective orders (§ 273.6, subd. (a)). The circumstances underlying this case involved defendant accosting the victim in her home, accusing her of having a relationship with one of her male friends, then grabbing her by the neck, forcing her to the ground, and strangling her.

By June 2018, the People filed another criminal complaint, case number CR950868, charging defendant with numerous crimes again involving G.C., such as stalking (§ 646.9, subd. (a)), burglary (§ 459), and vandalism (§ 594, subd. (a)). The People alleged defendant committed the offenses while released on bail in case number CR950304. (§ 12022.1.) The alleged stalking began in January 2018, when defendant entered the victim's home in violation of a restraining order and threatened her while holding a knife. The alleged stalking came to an end in June 2018, after defendant tried to pull the victim through a window at her home, and threw rocks through her home window and through her car windshield.

In July 2018, in case number CR950304, defendant pled no contest to the section 273.5, subdivision (f)(2) ("273.5(f)(2)") count and admitted the prior conviction allegation. In case number CR950868, defendant pled no contest to the section 646.9, subdivision (a) count, and admitted the on-bail enhancement. When entering these pleas, defendant indicated, in the written plea form that he initialed and signed, his understanding that the trial court would dismiss the balance of the charges and trailing

² All further statutory references are to the Penal Code unless otherwise indicated.

misdemeanor cases but could consider the dismissed counts at sentencing. (*People v. Harvey* (1979) 25 Cal.3d 754, 758.) In August 2018, the court placed him on five years of probation.

In April 2019, the probation department alleged defendant violated his probation conditions by banging on G.C.'s door, slashing her car tires, and possessing methamphetamine and a glass pipe when taken into custody. After the victim recanted, claiming she was not present and her tires popped on their own, defendant admitted he violated his probation in case numbers CR950304 and CR950868 by possessing methamphetamine.

At his June 2019 sentencing hearing, defense counsel called G.C. to the stand. G.C. testified she has known defendant for 17 years, dated him since 2014, and did not want him to go to prison. She testified that he has a severe drug problem, but when not on drugs, he is "beautiful. He has his own business. He works in the community. He's respectful. He's loving. He does not do anything that he does when he's on drugs." The victim testified that defendant can get "very aggressive" when using drugs, that she did call the police numerous times in 2018, and that defendant had put his hands on her a few times though not recently. She testified that she went to Hilltop Recovery Center and enrolled defendant into a year-long program. Defense counsel introduced in evidence a letter from the Hilltop Recovery Center showing it admitted defendant into a residential treatment program.

After the presentation of evidence and argument, the trial court revoked probation, noting that while on probation defendant failed to enroll in a batterer's treatment program, failed to enroll in community service, did not make any payments toward his fines, continued to violate the law, failed to abstain from using drugs, and continued to victimize G.C. Observing that the primary purpose of probation is rehabilitation, the court remarked it was

fairly clear from defendant's performance on probation that purpose was not going to be achieved.

The trial court then sentenced defendant to the upper term of four years for the section 273.5(f)(2) violation, a consecutive eight-month subordinate term for the section 646.9, subdivision (a) violation, and two years for the on-bail enhancement. When discussing its imposition of the upper term for the section 273.5(f)(2) violation, the court found that the one circumstance in mitigation—i.e., defendant's acknowledgement of wrongdoing early in the criminal process—was outweighed by the following numerous aggravating circumstances: “[T]he crime involved great violence, great bodily harm, threat of great bodily harm, or other acts disclosing a high degree of cruelty, viciousness or callousness”; “[t]he defendant has engaged in violent conduct which indicates a serious danger to society”; “[t]he defendant's prior convictions as an adult are numerous and increasing in seriousness”; “[h]e received a prior county jail prison term”; “[h]e was on probation when the crime was committed”; and “his prior performance on probation was unsatisfactory.” Defendant appealed.

DISCUSSION

Defendant contends the trial court failed to consider a number of mitigating circumstances when imposing the sentence, namely, the victim's stated wishes and plea for leniency, defendant's “treatable” substance abuse problem, and his “job performance.” He argues the court's distorted balancing of the aggravating and mitigating factors resulted in the erroneous imposition of the upper term for his section 273.5(f)(2) conviction, consecutive sentences, and failure to strike the on-bail enhancement. He also contends the court erred by failing to provide reasons for imposing a consecutive

sentence. The People contend defendant forfeited these claims because he did not raise them below. We agree with the People.

“[C]omplaints about the manner in which the trial court exercises its sentencing discretion and articulates its supporting reasons cannot be raised for the first time on appeal.” (*People v. Scott* (1994) 9 Cal.4th 331, 356 (*Scott*)). This rule applies to “cases in which the court purportedly erred because it . . . misweighed the various factors, or failed to state any reasons or give a sufficient number of valid reasons.” (*Id.* at p. 353.)

Defendant raises a number of arguments in an effort to get around the forfeiture doctrine. First, he argues the doctrine should not apply because the trial court did not give the parties a meaningful opportunity to object. Second, he contends an objection would have been futile given the court’s statement when granting probation that if he violated probation, he would likely not get another chance and he would be “looking at six years eight months in prison.” We are unpersuaded.

A meaningful opportunity to object “can occur only if, during the course of the sentencing hearing itself and before objections are made, the parties are clearly apprised of the sentence the court intends to impose and the reasons that support any discretionary choices.” (*Scott, supra*, 9 Cal.4th at p. 356.) Here, at the very beginning of the sentencing hearing on the probation violation, the court announced it was “inclined to follow” the recommendation in the probation report, which, per the June 2019 supplemental report, was to impose the six-year, eight-month total prison sentence.³ After indicating its inclination, the court heard and considered

³ The June 2019 supplement referenced the original probation report’s discussion of the aggravating and mitigating circumstances, which reflected the same aggravating and mitigating circumstances the court ultimately relied on. Documents in the record show the parties received both the

evidence and argument from both sides. This record falls far short of demonstrating that the parties were deprived of meaningful opportunity to object or that an objection would have been futile. Indeed, while the court indicated it was inclined toward a disposition, it never indicated its mind was made up.

Next, defendant asks us to exercise our discretion to consider the merits of his forfeited claim given the length of the sentence and the victim's request for leniency. We decline to do so. The forfeiture doctrine promotes important interests, such as judicial economy, and the claimed errors could have been called to the court's attention and easily addressed at the sentencing hearing. (*People v. Smith* (2001) 24 Cal.4th 849, 852.)

Alternatively, defendant argues his trial counsel's failure to object amounted to ineffective assistance. Defendant, however, does not tender a developed argument to support his conclusory assertion that counsel had no tactical or plausible reason for not making the appropriate objections. (See *People v. Mendoza Tello* (1997) 15 Cal.4th 264, 266–267 (*Mendoza Tello*).)⁴

original report and the June 2019 supplement prior to the sentencing hearing.

⁴ In any event, an ineffective assistance claim is unavailing on the record before us. With regard to defendant's claim that the court should have considered the victim's stated wishes and plea for leniency and defendant's "treatable" substance abuse problem as mitigating circumstances, the record sheds no light on why counsel did not object, and it cannot be said there is no possible satisfactory explanation. (*Mendoza Tello, supra*, 15 Cal.4th at p. 266.) Counsel might have declined to object believing the objection would be futile under the specific circumstances. (*People v. Price* (1991) 1 Cal.4th 324, 387 ["Counsel does not render ineffective assistance by failing to make motions or objections that counsel reasonably determines would be futile."].) Indeed, we may reasonably assume the trial court decided the circumstances presented through the victim's testimony were not mitigating. (Cal. Rules of Court, rule 4.423(c); see *People v. Lai* (2006) 138 Cal.App.4th 1227, 1258 ["Sentencing courts have wide discretion in weighing aggravating and

What remains is defendant's complaint that the trial court's imposition of such a lengthy sentence bars him from obtaining drug treatment and does not serve the public interest. Specifically, he claims the court abused its discretion by declining to lessen the sentence, which it could have done by imposing a term other than the upper term on the section 273.5(f)(2) count, striking the two-year on-bail enhancement, or imposing concurrent sentences. Defendant, however, never clearly articulated this specific argument below. What his trial counsel did argue was that the court should

mitigating factors.”].) Defendant does not demonstrate error with the court's conclusion. (See *People v. Martinez* (1999) 71 Cal.App.4th 1502, 1511 [“drug addiction is not necessarily regarded as a mitigating factor when a criminal defendant has a long-term problem and seems unwilling to pursue treatment”]; *People v. Reyes* (1987) 195 Cal.App.3d 957, 963.) Defendant's reply brief adds that the court should have considered his “job performance” to be a mitigating circumstance, but setting aside the belated nature of this contention, defendant identifies no record citations to support this claim, and it is unclear what is being referenced. On this record, the ineffective assistance claim fails.

Similarly, with regard to defendant's claim that the trial court erred by failing to provide reasons for imposing a consecutive sentence, the record sheds no light on why counsel did not object, and it cannot be said there is no possible satisfactory explanation. Again, counsel might have declined to object believing the objection would not be meritorious under the specific circumstances. Here, the trial court listed numerous aggravating circumstances at play. (See Cal. Rules of Court, rule 4.421(a)(1), (b)(1), (b)(2), (b)(3), (b)(4), (b)(5).) The record fails to establish that, but for counsel's alleged omissions defendant would have received a more favorable outcome. (*People v. Davis* (1995) 10 Cal.4th 463, 552; see, e.g., *People v. Osband* (1996) 13 Cal.4th 622, 728–729 [error not reversible where court relied on same factor to impose consecutive sentence and upper term but court had a number of aggravating factors to choose from, and “could have selected disparate facts from among those it recited to justify the imposition of both a consecutive sentence and the upper term”].)

not impose a prison sentence and should give defendant a chance to complete the program at Hilltop, citing public policy.

In any case, the determination of the appropriate term is a matter within the broad discretion of the trial court (*Scott, supra*, 9 Cal.4th at p. 349), and its decision will be upheld unless it is “arbitrary or capricious or ‘exceeds the bounds of reason, all of the circumstances being considered.’ ” (*People v. Welch* (1993) 5 Cal.4th 228, 234.) Here, the trial court heard the evidence defendant presented at the sentencing hearing, considered the probation report, heard argument from both sides, then explained the bases for its decision. The court’s decision was well within the bounds of reason.

DISPOSITION

The judgment is affirmed.

FUJISAKI, J.

We concur.

SIGGINS, P.J.

JACKSON, J.

(A157391)